



NEW MEXICO LEGISLATIVE COUNCIL SERVICE INFORMATION BULLETIN NUMBER 25

LEGISLATIVE RESEARCH, POLICY & COMMITTEE SERVICES

MAY 2014

AN OVERVIEW OF THE CHILD ABUSE AND NEGLECT REPORTING SYSTEM

SUMMARY

This Information Bulletin provides an overview of the process that the Children, Youth and Families Department (CYFD) uses to screen, prioritize and investigate reports of suspected child abuse and neglect.

INTAKE SCREENING

The Statewide Central Intake (SCI) unit of the Protective Services Division (PSD) of the CYFD accepts reports of suspected child abuse and neglect 24 hours a day, seven days a week at 1-855-333-SAFE or by dialing #SAFE when using a cell phone.

When a person reports suspected child abuse or neglect through the CYFD hotline, PSD intake workers use a screening and response priority tool to determine whether the report should be "screened in" for additional investigation or "screened out".

A report will be screened out if it:

- does not contain a specific allegation of abuse or neglect;
- contains "insufficient information to investigate";
- does not contain sufficient information to locate the family; or
- is a duplicate or there is a pending investigation of the same or a similar incident.¹

In fiscal year 2013, there were 32,930 reports of abuse or neglect made to the SCI unit.

- 18,197 of the reports were screened in for investigation.
- 14,733 of the reports were screened out.

Source: CYFD, 360 Yearly; State Fiscal Year 2013.

In addition, a report will be screened out if the alleged perpetrator is not a parent, guardian or custodian, but in those cases the report is referred to law enforcement for investigation.² If the report involves an Indian child within a reservation or pueblo, the report is referred to tribal law enforcement or tribal social services.³

The CYFD maintains a record of all screened-out reports for one year after the "date of last activity" on the report.⁴ Files pertaining to screened-in reports are maintained for 18 years after case closure.⁵

WHO MUST REPORT?

Prior to a recent decision by the New Mexico Court of Appeals, the CYFD interpreted the child abuse reporting requirements in the Children's Code to require *every person* who knows or has a reasonable suspicion that a child is abused to report the matter. The statute reads:

Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter . . .".⁶

However, the New Mexico Court of Appeals (*State v. Strauch*, 2014-NMCA-020) held that despite use of the term "every person", the legislature did not intend the statute to apply to every person.⁷ Instead, the court found the statute to be ambiguous and concluded that the reporting requirement "does not apply to every person, but instead applies to the ten categories of people listed and other professionals or government officials who are likely to come into contact with abused and neglected children during the course of their professional work".⁸ The New Mexico Supreme Court has agreed to hear the *Strauch* case, and the appeal is pending.

Nationwide, as of November 2013, 17 states and Puerto Rico required *all* persons to report suspected child abuse or neglect.⁹

Law enforcement officers in New Mexico have additional reporting duties. A law enforcement agency that receives a report of suspected child abuse or neglect must immediately report the matter to the CYFD by telephone and must submit a written report to the CYFD within 48 hours.¹⁰ Similarly, the CYFD must submit all reports of suspected child abuse or neglect received by the CYFD to local law enforcement.¹¹

PRIORITIZATION

Once a report of alleged child abuse or neglect is screened in, the report is prioritized by PSD workers. Based on the facts alleged in a report, each report is assigned to one of three categories: emergency, priority one or priority two.¹² The priority level of a report determines the time frame within which the CYFD must initiate an investigation.

"Emergency report" means a report alleging a serious and immediate safety threat involving a vulnerable child, including a report of:

- an abandoned infant or child;
- any physical injury to an infant;
- a potentially life-threatening situation;
- recent sexual abuse; or
- recent serious trauma, such as a head injury, burns or broken bones.

In addition, any request by law enforcement for an immediate response is prioritized as an emergency report.

"Priority one report" means a report alleging physical injury or a serious safety threat to a vulnerable child, but where the child is in a safe environment at the time of the report and will remain in a safe environment for the next 24 hours.

"Priority two report" means a report alleging a safety threat where there is no immediate concern for the child's safety. A priority two report may include a report of:

- physical abuse with no indication of injury; or
- abuse or neglect where the alleged perpetrator no longer has access to the child or where a protective parent or guardian has already intervened.

An **emergency report** requires initiation of an investigation within three hours.

A **priority one report** requires initiation of an investigation within 24 hours.

A **priority two report** requires initiation of an investigation within five calendar days.

Initiation of an investigation occurs when a PSD worker makes face-to-face contact with the alleged victim or documents diligent efforts to establish face-to-face contact with the alleged victim.

REPORTS TO LAW ENFORCEMENT

The CYFD reports all screened-in reports to the appropriate law enforcement agency. Only law enforcement personnel may remove a child from the home and take the child into custody without a court order.¹³

In 2009, the Children's Code was amended to require an on-site safety assessment by the PSD prior to law enforcement placing a child into emergency temporary custody.¹⁴ The law now requires the PSD to conduct an on-site safety assessment before law enforcement personnel may take a child into custody unless:

- the child's parent, guardian or custodian has caused or attempted to cause great bodily harm to the child, the child's sibling or another parent, guardian or custodian of the child;
- the child has been abandoned;
- the child is in need of emergency medical care;
- the PSD is not available to conduct a safety assessment in a timely manner; or
- the child is in imminent risk of abuse.¹⁵

Prior to the 2009 amendment, there was no requirement that law enforcement personnel inform the CYFD prior to taking a child into custody.¹⁶

INVESTIGATION

Although the CYFD is tasked with "preserv[ing] the unity of the family whenever possible", the Children's Code mandates that the "child's health and safety shall be the paramount concern".¹⁷

During an investigation, a PSD worker is required to interview and observe the allegedly abused or neglected child and all other children who reside in the household.¹⁸

Investigations are sometimes complicated by a lack of cooperation on the part of the child's parent or guardian. PSD workers must inform the child's parent or guardian that the parent or guardian is not required to answer questions or cooperate in the early stages of the investigation.¹⁹ In cases where a parent or guardian refuses to cooperate, PSD workers must determine whether it is necessary to contact law enforcement or obtain a court order to ensure the safety of the child.

Mandatory reporters, such as public school personnel, are required to permit PSD workers to interview children involved in a CYFD investigation whether or not the child's

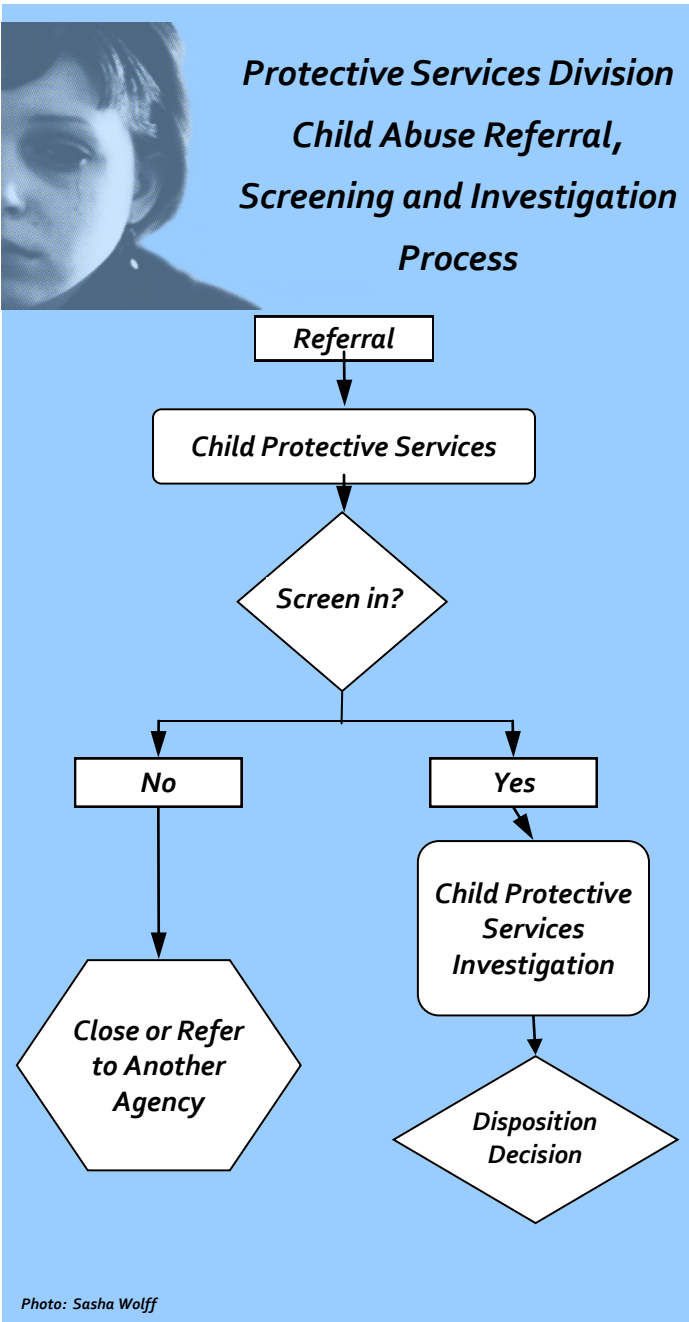
parent or guardian has given permission.²⁰ PSD workers must notify the child's parent or guardian of the interview in advance, unless the PSD worker determines that prior notification would adversely affect the safety of the child or compromise the investigation, in which case the parent or guardian must be notified within 24 hours after the interview.²¹ During an investigation, PSD workers must also seek to conduct a safety and risk assessment of the child's home.²²

In April 2014, the governor issued three executive orders aimed at reforming the CYFD investigation procedure. Under the reforms, caseworkers must seek police reports and investigatory materials from law enforcement prior to rendering an investigation decision.

Additionally, the CYFD has been directed to implement a policy requiring a supervisory-level review of reports involving a family that has already been the subject of two or more CYFD investigations, whether or not the abuse or neglect was ultimately substantiated in the prior cases.

The reforms are also intended to improve information-sharing between agencies. Specifically, the SCI has been instructed to "expand its scope beyond being solely a referral line" and to share information on prior reports and investigations with law enforcement.

Source: Executive Orders 2014-001, 2014-002 and 2014-003.



INVESTIGATION TIME FRAME AND DISPOSITION

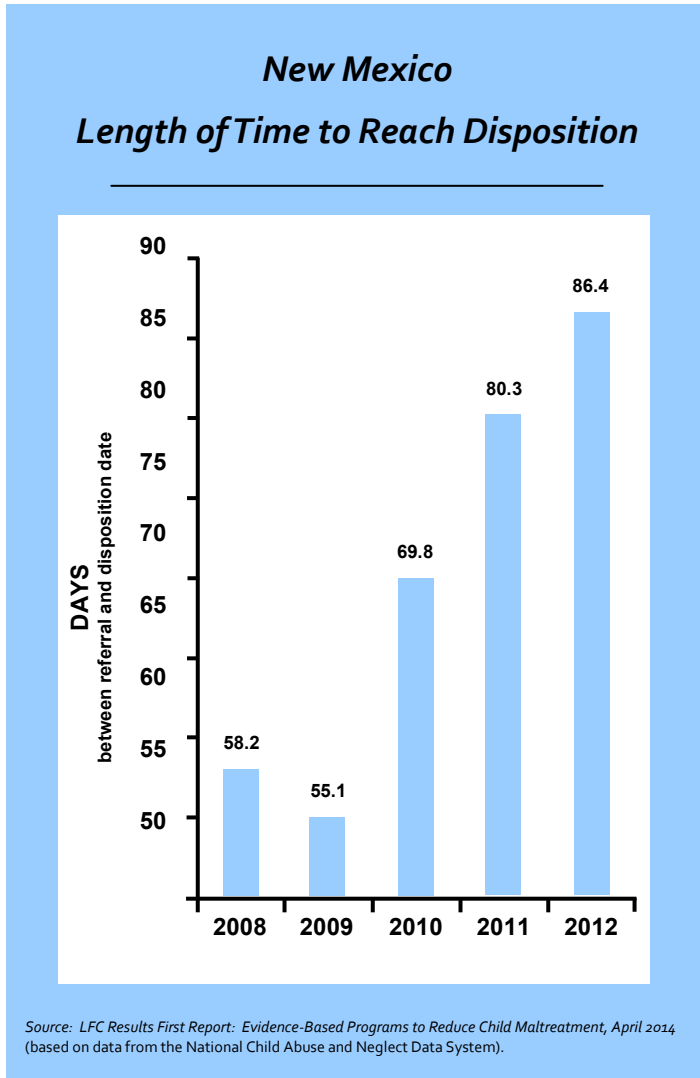
All accepted reports of abuse or neglect must be "substantiated" or "unsubstantiated" within 45 days of the SCI accepting the report for investigation; however, an extension of 30 days may be approved by a CYFD supervisor.²³

The disposition of the investigation is based upon a "safety decision" made by the PSD worker that the child is "safe", "conditionally safe" or "unsafe".²⁴ The safety decision is based on a balancing of the presence of safety threats and any "protective capacities" that may control or mitigate those threats.²⁵

Following the disposition decision, the case will either be closed or it will proceed to children's court for further intervention, which may include in-home services or foster care and permanency planning.²⁶

Recently, the CYFD has struggled to complete investigations within the prescribed time frame. In 2012, the average length of time to reach a disposition decision was 86.4 days.²⁷

In April 2014, the CYFD informed the Legislative Finance Committee that the average number of cases per PSD worker that are pending a disposition decision is 36 cases.²⁸



Endnotes

- ¹Children, Youth and Families Department, *360 Yearly: State Fiscal Year 2013*; Children, Youth and Families Department SCI SMD Tool, revised June 4, 2012, available at: [http://www.nmlegis.gov/lcs/lcsdocs/SCI%20SDM%20Tool%20\(6-4-12\).pdf](http://www.nmlegis.gov/lcs/lcsdocs/SCI%20SDM%20Tool%20(6-4-12).pdf)
- ²⁸10.2.14(C) NMAC.
- ³⁸10.2.14(D) NMAC.
- ⁴⁸10.2.15 NMAC.
- ⁵⁸10.2.15 NMAC.
- ⁶Section 32A-4-3(A) NMSA 1978.
- ⁷*State v. Strauch*, 2014-NMCA-020.
- ⁸*Id.*
- ⁹U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau, *Mandatory Reporters of Child Abuse and Neglect*, available at: https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf (note that the report lists 18 states, but includes New Mexico as a state requiring all persons to report).
- ¹⁰Section 32A-4-3(B) NMSA 1978.
- ¹¹Section 32A-4-3(B) NMSA 1978.
- ¹²8.10.2.13 NMAC.
- ¹³Section 32A-4-6(A) NMSA 1978; 8.10.3.12(F)(4) NMAC.
- ¹⁴Section 32A-4-6(A) NMSA 1978.
- ¹⁵Section 32A-4-6(A) NMSA 1978.
- ¹⁶Laws 1993, Chapter 77, Section 100.
- ¹⁷Section 32A-1-3(A) NMSA 1978.
- ¹⁸8.10.3.11 NMAC.
- ¹⁹Section 32A-4-4(B) NMSA 1978; 8.10.3.12(F)(1) NMAC.
- ²⁰Section 32A-4-5(C) NMSA 1978; 8.10.3.11(A)(2) NMAC.
- ²¹Section 32A-4-5(F) NMSA 1978; 8.10.3.12(B) NMAC.
- ²²Section 32A-4-6(A) NMSA 1978; 8.10.3.10 NMAC.
- ²³8.10.3.17 and 8.10.3.18 NMAC.
- ²⁴8.10.3.18 NMAC.
- ²⁵8.10.3.17 and 8.10.3.18 NMAC; New Mexico Child Safety Assessment, available at: <http://www.nmlegis.gov/lcs/lcsdocs/New%20Mexico%20Child%20Safety%20Assessment.pdf>.
- ²⁶Section 32A-4-1 et seq. NMSA 1978.
- ²⁷Charles Sallee and Dr. Jon Courtney, presentation to the Legislative Finance Committee (based on data from the National Child Abuse and Neglect Data System), *LFC Results First Report: Evidence-Based Programs to Reduce Child Maltreatment*, April 2014.
- ²⁸Yolanda Berumen-Deines, secretary, CYFD, presentation to the Legislative Finance Committee, April 11, 2014.

This information bulletin does not represent a policy statement of the Legislative Council Service or its staff. This information bulletin was written by Caela Baker. For more information, contact the Legislative Council Service at (505) 986-4600.

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